



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

RELATIVE PROPERTY RIGHTS OF WOMEN IN MOHAMMEDAN COUNTRIES.

BY GEORGE S. BATCHELLER, ASSOCIATE JUSTICE OF THE INTERNATIONAL COURT OF APPEALS (MIXED COURTS) OF EGYPT.

THE institution of Woman's Rights is of comparatively recent establishment. Until within about sixty years the rights of married women were classed in America and England with those of "lunatics." In the legal formulas of England and until about 1850 in America, the classification was "Infants, Lunatics and Married Women." In about the year 1848 the legislature of the State of New York overthrew the common-law distinction, and enacted the statute emancipating married women from these barbaric disabilities, and placed her on the same plane with men in regard to property rights and privileges.

Throughout Europe, the old repressive system continued; and, in most countries, is in force to-day, with these unreasonable disabilities as to the exercise of property rights. Only in 1882 did England emancipate women from these humiliating restrictions, by adopting almost literally the New York statute in the "Married Woman's Property Act"; while on the Continent, with the exception of Hungary, the "Germanic system" of disabilities still prevails.* The Hungarian law is quite unique, giving to all women, married or single, full control of their property, and going so far as to declare of full age and contracting capacity all married women, no matter how young they may be on entering into the marriage relation.

In France, as in all other Continental countries, married women remain under the tutelage of their husbands, and can exercise no independent powers over their personal estates; but their *rights*

* The German Emperor recently defined the vocation of woman as follows: "*Kirche, Kinder, Küche*"—Church, Children and Cooking.

may be assured and regulated by the Contract of Marriage, which in France and most European countries must be passed in the presence of some Government functionary with subscribing witnesses. In this document they stipulate as to the "*dot*" or dowry, and as to their separate estates; and determine whether they will join their property with that of their husband under the "Community of Goods," or, under the "*régime dotal*," keep it separate; but it must always be under the supervision of a guardian, who may or may not be the husband. There is a judicial adage which declares: "*Le mari est maître et seigneur de la communauté.*" The most frequent contract is what is termed "*régime dotal avec limitations*," wherein the original estate of the parties is kept separate, but whatever is acquired after the marriage is owned jointly by the husband and wife. This is a considerable advance on the ancient system; still, the wife is not free to control her estate, and is considered for all practical purposes as an "infant" or minor as to ownership or control. While single, the women of France are now practically free.

The situation of women in Mohammedan countries presents many interesting conditions very little understood among so-called "civilized" people.

The prevalent notion that Mohammedan women are very materially restricted in their property relations—that, in fact, they are little better than slaves, possessed of few rights which man is bound to respect—is quite erroneous.

In general terms, "woman's rights" in respect to property and material possessions of pecuniary value exist in the largest sense among Mohammedan people, and have so prevailed for many centuries. In fact, Mohammedan women, whether single or married, are absolutely free in respect to property relations. They may inherit, buy and sell and acquire by all the methods of legitimate business, the same as men; and they may carry on any trade or profession, and manage their business affairs, without the participation of husbands, parents, brothers, or other persons than those designated by themselves, should they prefer not to act personally, as their agent or representative.

The "*Wakil*," or business attorney of a woman, is a very frequent personage in business affairs; and he is often called into Court to answer for his administration, cited by the woman proprietor, who is not required, if she be of full age, to have the

consent of her husband or guardian, as in Europe, to sue and be sued and perform all the acts incident to her estate. Property rights, it will be noted, are entirely independent of sex or marital relation.

The only disability attending these women's property relations is in acquirement by inheritance. Their sex and social condition throw about them certain restraints, but solely as to succession and inheritance. There are no restrictions as to purchase and sale and general administration. In the sale of land, the husband remains an entire stranger; he does not join in the deed of conveyance nor participate in the price. But, in respect of inheritance, the rights of women are relatively inferior to those of men.

Sons inherit one-half, daughters one-quarter, wives only one-eighth; but if the wife has no children, she takes one-quarter. Where there are more than one wife (and the Mohammedan law allows of four), the eighth, or quarter, as the case may be, must be distributed *pro rata* among them all. The wife is allowed but one-eighth when there *are* children, because the mother will share to a degree in the minor child's inheritance; and, again, children are bound, as soon as capable, to contribute to the support of the mother. Furthermore, there is invariably a "*dot*" or dowry provided by the husband at the time of marriage, which remains inviolate to the wife; and, if it has not all been paid over to her in advance, or if it has been used by the husband even for family necessities, it remains a debt against the estate, and must be paid before distribution to the other heirs. The wife is not obliged to contribute from her separate estate for the maintenance of the family; and, if the husband has used any part of the wife's property for such purpose, she may maintain a suit against him for its restitution. As for the daughters, it is presumed that they require less than the sons, and they may remain under the protection of the male members of the family even after the breaking up of the "home." Furthermore, should they marry (and marriage is universal, there are no "*old maids*"), they receive a "*dot*" from their husband.

A Mohammedan can only dispose of a third of his estate by will and testament to the prejudice of his legal heirs, nor can he prefer one member of his family to another. The succession of estate is a Koranic canon, and may not be altered or modified by

individual act or governmental legislation. But there are certain fixed inhibitions as to inheritance: for instance, the person must be free. "He is prohibited if he has ever attempted the life, with or without premeditation, of his parent;" but he may inherit "if he has slain his parent" in legitimate self-defence, or if he was the indirect cause of his parent's death, or if he was insane.

The difference of religion excludes a Christian from all rights of inheritance from a Mohammedan, and *vice versa*. A Mussulman may inherit the goods of his apostate parent, acquired before the abjuration of his faith; but goods acquired after the abjuration go to the "*Beit-el-Mal*," the Treasury.

While a Mohammedan may not by testament dispose of more than one-third of his estate to the prejudice of his legal heirs, there is a very extraordinary exception to this rule which is not unfrequently followed by the devout Mussulman, or by a married woman for some less pious motive. "While in perfect health and sound mind," he may constitute a "*Wakf*" (trust) of all or a part of his estate, the revenues to be paid in whole or in part to his family; or the revenues may be devoted to other "moral purposes" to the exclusion of the family, provided always that the "remainder," after the expiration of the special trust, shall go to some "pious object"—the maintenance of mosques, hospitals, or other charitable institutions. But if the "*Wakf*" be constituted "during the last illness" of its creator, he may only "*wakfieh*" (or trustee) one-third of his estate. The same right of *wakf* is enjoyed by women, and they not unfrequently by its exercise exclude the husband, or other members of their family, from motives entirely their own.

Egypt may be said to be the country of trust estates. There are so many, both public and private, that there is an Administration of *Wakfs*, with a Minister at its head, and this Institution holds some of the most valuable property in Egypt, and exercises extensive powers in the management of estates. A private *wakf* passes to this Administration after the extinction of the family or other object for which it was created. These private *wakfs* are usually administered by a private trustee, or "*Nozeer*," who may be called to an account by any beneficiary and replaced for sufficient cause. This "*Nozeer*" is usually some member of the family, but not necessarily so; and women are often heard in court on

allegations of maladministration of their interests. Their rights are maintained with scrupulous exactitude, whether the "*No-zeer*" be a member of their family or a "stranger." It may not be inappropriate to cite a couple of instances, from thousands of cases, of the independent exercise of "woman's rights," under this institution.

The wife of a prominent Pacha of Cairo, who had received a large dowry on her marriage from the Khedive Ismaïl, had permitted her rather gay lord to employ her fortune as suited his peculiar methods of enjoyment, thinking there was sufficient to last out. But, discovering that he was intrenching upon the principal, his wife revoked his power of attorney, and placed a large portion of her remaining fortune in trust with the *Wakfs* Administration, providing that the income should be paid to herself and her husband during their lifetime, and, as there are no children, the remainder to charitable objects.

The other instance is where an emancipated slave claimed in the Mixed Courts the revenues of a large portion of the immense fortune of Prince Halim. The Princess Zenab Hanem, the sister of Prince Halim, inherited this large estate from her father, Mehemet Ali; and, having quarrelled with her brother (who had been banished from Egypt by the Khedive Ismaïl), sought to cut him off by the constitution of a *Wakf* of all her estate for the benefit of her husband and children, the remainder of revenue, in the absence of children, to go to her enfranchised slaves, and finally to the *Wakfs* Administration. Unhappily, her husband died, and there were no children. Later, she became reconciled with her brother, and sought to revoke the trust for the enfranchised slaves, and bestow her "succession" upon her brother, Prince Halim. In fact, on the death of the Princess, Halim took possession of the estates and enjoyed for fifteen years their vast revenues, consisting of the rentals of the new Sheppard's Hotel, the fine blocks of buildings ranging to the south, and also vast tracts of agricultural lands. After this long delay, the sole survivor of the enfranchised slaves, a negress, came forward to claim the revenues, maintaining that the act revoking the trust was illegal; that consequently the trust should be administered for her benefit; and that Halim or his heirs should account to her for the fifteen years' wrongful enjoyment. Owing to the interest of Halim's associate, a Greek subject, jurisdiction in this case

came to the Mixed Courts. This case, involving several millions of pounds sterling, serves to illustrate the fact that there are judges in Egypt who take cognizance of the rights of women, even of an enfranchised negress.

The division of property is such as to greatly facilitate its distribution among heirs, and especially to women of the poorer classes, whose inheritance is often exceedingly small. The unit of distribution is the "*Kierat*," or twenty-fourth part, and the "*Kierat*" has also its twenty-fourth part, or "*Sem*." For instance a "*Feddán*" of land (about an acre) is twenty-four "*Kierats*," and so with a house, or any other specified property. An intestate leaves a farm of twenty-four *Feddans*, and five heirs—two sons, two daughters and a widow. The widow would first receive her eighth, being three *Kierats*, leaving twenty-one *Kierats*; of this the sons would receive two-thirds, or seven *Kierats* each; and the remaining third, seven *Kierats*, would be equally divided between the two daughters.

It is not the policy or general practice for heirs to sell their heritage; and, as the patriarchal system prevails, the oldest capable male member of the family is usually authorized to administer the succession and distribute the revenues according to the legal proportions. It frequently happens that by a partition—and any heir may demand the setting apart of his or her inheritance—a single room in a house will fall to an heir, who thereby acquires an absolute title, with right of access, although the remainder of the house may eventually be owned by strangers; or a single *Kierat* of land, situated in a large tract belonging to others, may be owned by a poor woman who has the right of way and irrigation privileges the same as the greater proprietor. Many legal actions are brought by women for the maintenance of their rights often violated by the larger adjoining proprietors. Quite recently, an action was maintained in the Mixed Courts by a woman, whose single room, on the third floor, was damaged by the giving way of a supporting wall in a store on the ground floor, through the fault of the owner, a foreigner.

And thus, since the foundation of the Mohammedan religion, over sixteen centuries ago, these "rights" of Mohammedan women have been recognized and held as inviolate as those of the "sterner sex."

GEORGE S. BATCHELLER.